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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re Isabella M., a Person Coming Under the Juvenile Court Law.	B217344 (Los Angeles County Super. Ct. No. CK71671)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. CHASTITY B., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County. Valerie Skeba, Referee. Affirmed.

M. Elizabeth Handy, under appointment by the Court of Appeal, for Defendant and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, and Judith A. Luby, Principal Deputy County Counsel, for Plaintiff and Respondent.

Chastity B., the mother of Isabella M., appeals the juvenile court's denial of several motions filed under Welfare and Institutions Code[1] section 388. She also contends that the juvenile court abused its discretion when it denied her further reunification services. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

When Isabella M. was a little more than one year old, Los Angeles County deputy sheriffs entered her family's home while executing a search warrant. According to the deputy sheriffs, the family resided in a back bedroom; when the deputies reached it, they found Isabella's father, John M. holding Isabella M. as a shield. Several ounces of marijuana and digital scales were found in the child's clothing closet. A glass pipe used for smoking methamphetamine was recovered from the toilet bowl. The deputies also recovered a stolen car at the residence, a car that both John M. and Chastity B. admitted driving.

Chastity B. admitted to marijuana and methamphetamine use. John M. admitted to selling methamphetamine and to snorting methamphetamine at home. John M. acknowledged that he had been using drugs for as long as he could remember; that in 1987 he had nearly overdosed on crack cocaine; and that he was currently on parole. The Department of Children and Family Services (DCFS) detained Isabella M. and filed a dependency petition alleging that she fell within the jurisdiction of the juvenile court under section 300, subdivision (b) (failure to protect). Isabella M. was placed in protective custody.

On April 22, 2008, Chastity B. pleaded no contest to the petition. The parties agreed upon dispositional orders that were entered by the court on May 22, 2008. Isabella M. was determined to be a dependent child; her placement was found to be

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[1] Unless otherwise indicated, all further statutory references are to the Welfare and Institutions Code.

necessary and appropriate, and reunification services were ordered for Chastity B. The reunification plan included attendance at a drug rehabilitation program with random testing. Chastity B.'s visitation was ordered to be monitored until she had achieved a sufficient number of consecutive negative drug tests.

Chastity B. initially made good progress toward reuniting with Isabella M. As of late June 2008, Chastity B. had negative test results for five drug tests administered between April and June. She regularly visited with Isabella M. and according to DCFS, "behaved well" during visits. Visitation had been liberalized to unmonitored day visits. On June 27, 2008, the juvenile court ordered that Chastity B. have overnight visits with Isabella M.

After the overnight visits began, a DCFS social worker found Chastity B.'s mother and brother alone with the child despite a court order that Chastity B. could not leave Isabella M. with others during visits. Chastity B. had said that her mother (about whom DCFS had concerns) no longer lived in the house where Chastity B. lived, but the social worker observed that the maternal grandmother was in fact living in the home. DCFS reported that Isabella M. had a terrible fit immediately after one visit, and that she was crying in her sleep. Chastity B.'s drug tests continued to indicate no use of drugs. The court ordered that DCFS verify that the maternal grandmother had moved out of the home and also ordered a schedule of increasing visitation.

On August 27, 2008, Chastity B. filed a section 388 petition seeking the return of Isabella M. On September 29, 2008, the court set a hearing on the petition for October 20, 2008. The following day, DCFS filed a section 388 petition seeking a limitation on Chastity B.'s visitation to monitored visits in a neutral setting up to three times per week. The basis for the request was that on September 19, 2008, Chastity B. had disclosed that the reason she had missed a scheduled August drug test was that she had been in jail for car theft at the time. According to DCFS, Chastity B. acknowledged

being placed on probation for a year as a result of this incident.[2] This petition was set for hearing at the same time as the other section 388 petition.

For the combined section 366.21, subdivision (e) and section 388 petition hearing on October 20, 2008, DCFS reported to the juvenile court that Chastity B. had enrolled in a parenting education program and nearly finished it, but had not attended since July. She had ceased her formerly regular participation in individual counseling and drug counseling. She had failed to take her drug tests on August 28, 2008, and September 22, 2008. On October 20, 2008, the court granted Chastity B. continued family reunification services; granted DCFS's section 388 petition for a change to monitored visitation; and denied Chastity B.'s section 388 petition.

As of December 2008, Chastity B. had not resumed attending parenting education, nor had she returned to her drug counseling program. Chastity B. said that she had enrolled in a new counseling program, but she had not provided any information about that program. She had failed to take drug tests on October 2 and December 2, 2008. On January 8, 2009, Chastity B. reenrolled in a drug counseling program at Family Services. In January 2009, the juvenile court ordered her to continue the drug program and testing, and set monitored visitation at a minimum of six hours per week.

DCFS reported to the juvenile court in March 2009 that Chastity B. had been late to several visits and had missed one entirely without notice. She claimed to have completed parenting classes, but could provide no verification. Chastity B. had failed to take four drug tests in January 2009 and February 2009.

Immediately prior to the April 2009 court hearing, DCFS informed the court that Chastity B. had not participated in drug testing, appeared not to have a stable residence, was 40 minutes late to a recent visit, and had been arrested for drug possession on March 20, 2009. Family Services, the provider of Chastity's drug and individual counseling programs, submitted a progress report stating, "Client was attending on [a] regular basis, showing good attitude, motivation and participation. Client was arrested

[2] DCFS found that the probation term was actually three years.

and missed 3 wks of program—will extend completion by same amount of time. Client is not drug tested at this facility." To DCFS's knowledge, Chastity B. was no longer undergoing drug tests. She had missed two late March visits but would not explain why, and she had gone a week without contacting her child. DCFS recommended that a section 366.26 hearing be scheduled with a permanent plan of adoption. In April 2009, the juvenile court set the section 366.21, subdivision (f) permanency hearing for May 15, 2009.

On May 11, 2009, Chastity B. filed one in a series of section 388 petitions asking that Isabella M. be placed with her. She submitted what purported to be a progress report from her drug program indicating that her participation was satisfactory. The progress report, dated April 15, stated, "Chastity re-enrolled in the program. She seems to be very motivated to not only staying clean and sober, but also to reunifying her family." DCFS informed the juvenile court that Chastity B. had abandoned her drug counseling program as of April 17, 2009, and submitted a program report dated May 7, 2009, that stated that Chastity B. had 20 total contacts with the program and had abandoned the program. The court denied this petition without a hearing on the grounds that it did not state new evidence or a change of circumstances, and it did not promote the best interest of the child. On May 14, 2009, the juvenile court granted John M. reunification services and terminated Chastity B.'s reunification services.

On May 22, 2009, Chastity B. filed another section 388 petition, this one contending that Isabella M. should be returned to her. She charged that DCFS was not supplying the court with her reports from her drug program and her drug test results, contended that she was "clean and sober," and asserted that she was fit and able to care for Isabella M. She submitted a progress report on the same form as the other program reports, this one dated May 7, 2009. This report, bearing the same date as the one submitted by DCFS that asserted that Chastity B. had abandoned the program, instead included the same text that had been on the April 15 progress report that Chastity B. had provided to the court: "Chastity re-enrolled in the program. She seems to be very motivated to not only staying clean and sober, but also to reunifying her family." This

form reported that Chastity had 19 total contacts with the program in contrast to the 20 contacts on the report submitted to the court by DCFS. The juvenile court denied the petition without a hearing because it did not state new evidence or a change in circumstance and because the proposed change of order would not be in Isabella M.'s best interest.

Chastity B. filed another section 388 petition in late June 2009. She claimed to be asking the court to change its orders of May 14, 2009 and May 22, 2008: "Court terminated Mother's reunification service after granting an extension of services on 10/20/08 and not stating how long services were to be, Court granted extended services for Good cause. Mother has learned & completed program. I would like to provide the court with certificate completing program." She stated that the following constituted changed circumstances: "Completed program, I changed my life around. I'm committed to being a mother and living a sober life. I have concerns about my daughter she is not happy, depressed tells me she wants to go home with me. She gets left out of activitys why the other children get to do and participate like fishing she tells me everything." In spaces dedicated to what orders were sought and why the change would be better for the child, Chastity B. wrote, "She has very Good vocabulary & she is left out of the group. She is confused. One day they potty train her next day they don't consistently potty train her. She gets nervous when she poops her diaper she cries tells me I'm sorry I'm sor[ry] don't hit me I'm sorry. [h]er hair is dirty her teeth are rotting. She doesn't get proper hyg[ie]ne doesn't brush her teeth. She is dirty. Cloth[e]s are dirty. Doesn't fit her. Shoes have holes and to[o] small, even though I have been providing F/mom with New Cloth[e]s and shoes. And food. " Chastity B. alleged that the foster mother discussed the case with Isabella M. and that Isabella M. had said that she has to stay with the foster mother and cannot see Chastity B. anymore. She stated that the foster mother was never with Isabella M.; that Isabella M. was forced to sleep on the floor; that Isabella M. and the foster mother took showers together daily; that the foster mother's parents were providing care but were physically unable to do so; that Isabella M. always had a wet diaper when she arrived for visits; that Isabella M. was never fed breakfast; that too many

people were living in the placement residence; and that Isabella M. was not being placed in a proper car seat.

A few days later, on July 2, 2009, Chastity B. filed another section 388 petition. In this petition, she argued that Isabella M. should never have been taken from her. She complained about the termination of reunification services. She stated that she had completed the drug program on June 9, 2009, in the fifth month of the program. She asked for Isabella M.'s return to her and stated that she was living with her brother in the maternal grandmother's home. Chastity B. contended that there was no longer any reason for Isabella M. to be in foster care; that she was not being well cared for in her placement; and that the foster mother had cancelled a July 2 visit because Isabella M. was ill but that the foster mother had not told Chastity of the cancellation. She stated that this petition was similar to one she had just filed, and submitted a letter in which she claimed to have completed 32 weeks of a chemical dependency program.

On July 13, Chastity B. filed yet another section 388 petition seeking Isabella M.'s return. In this petition she identified as the order she believed should be changed the May 14, 2009 termination of reunification services. She complained that she had checked in by 9:10 a.m. on second call, and that the court held the hearing and terminated her reunification services without her presence on the assumption that she was not participating in Family Services. She claimed that she had "completed Family reunification Services and rec[ei]ved a certificate of 32 weeks Chemical Dependency Program on June 9, 2009 And has own home, working, and I plan on living a sober life." She requested that Isabella be returned to her with family maintenance services, and to reconsider awarding her reunification services again so that she could present her certificate of completion to the court. She said she was sober, with a suitable home; and that she was very close to Isabella, visiting her three times per week. Chastity B. claimed never to have missed a visit.

On July 13, 2009, Chastity B. filed another section 388 petition asking to file what she termed "143 Pages of Important documents Drug Test progress reports, medical Doctor Exam from befor[e] detention." She stated that the court clerks had refused to

accept them but that they should be filed because they were relevant to the return of Isabella M. to her. Included in these documents was an unsigned one-page letter, not on any letterhead, that purported to be from a counselor at Family Services. According to this document, Chastity B. had completed the program on June 9, 2009. The letter indicated that Chastity B.'s program consisted of individual "counsiling," stated that she had "benifited" from the program, and noted that she had a "sponcer" for her progress along the 12 steps.

DCFS provided a report to the juvenile court in July 2009. In that report, DCFS stated, "On 5/07/09, mother's therapist, Marti[] Mimiaga of Family Service of Long Beach . . . telephonically informed DCFS that she has not seen Chastity since 4/16/09 and her case was closed effective 4/17/09. The court is respectfully referred to Client Progress Report date 5/07/09. In 6/11/09, mother provided DCFS with a certificate of completion for successful completion of 32 week program phase of Chemical Dependent Program. Mother was unable to provide DCFS with information of the program, such as address, telephone number, date of enrollment, and name of her counselor. The certificate is definitely a fake one because mother has never mentioned any other program than that of the Drug and Alcohol program of Family Services of Long Beach. Mother has not participated in a random drug testing program."

On July 13, 2009, the court denied the June petition without a full hearing on the basis that it had not stated new evidence or a change in circumstances. During the July 13, 2009 court hearing, the court stated, "Mother filed a 388 that's nearly 300 pages long. Much of the information is not pertinent to a 388. So it is denied, because it does not show a substantial change in circumstances." The court continued, "I don't believe it's in the best interest of the minor to grant Mother's 388." The court advised counsel for Chastity B. that the petition could be refiled if counsel found it meritorious (Chastity B. had personally prepared it), "But she's filed quite a few. And it needs to give me the specific information that addresses a substantial change in circumstances and specific facts indicating it would be in the best interest of the child to grant it. [¶] Go ahead. But much of what Mother is requesting is simply asking to reconsider findings that have

previously been made and including information that is just not relevant." The July 2 petition was denied without a hearing on July 13 as well.

On July 13, Chastity B. filed a notice of appeal. Where the notice provided a space for a statement of the findings and orders appealed from, Chastity B. wrote, "July 13, 2009 This hearing was A progress hearing. The Court denied mother's request to return child to her care[.] Mother objected to not return child. The Court would not allow mother to speake (*sic*)[.] The Court said mothers attorney can speake (*sic*) for her. but failed to do so," and also "4/20/09 Court set 366.21 for May 14, 09, on May 14, 09." She wrote that she appealed the order of July 13, 2009 "not returning child to Mother"; that on that date "I informed the Court my child was being Neglected in Foster care and I want my child returned, but the Court did not care." She also wrote, "I dont know what 388 petition the Court denied mother to ID Court she is completed Family Reunification Services but Court did not care." Chastity also stated that on July 13, 2009, the court had denied her section 388 petitions filed on June 25, 2009, July 2, 2009, and July 13, 2009.

DISCUSSION

I. Section 388 Petitions

Section 388 is a general provision permitting the court, "upon grounds of change of circumstance or new evidence . . . to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court." (§ 388, subd. (a).) The statute, an "escape mechanism" that allows the dependency court to consider new information even after parental reunification efforts have been terminated (*In re Jessica K.* (2000) 79 Cal.App.4th 1313, 1316), permits the modification of a prior order only when the petitioner establishes by a preponderance of the evidence that (1) changed circumstances or new evidence exists; and (2) the proposed change would promote the best interests of the child. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806.) The petitioner must make a prima facie showing of changed circumstances and best interests

in order to obtain a hearing; if the showing is inadequate to make a prima facie case, the juvenile court may deny the petition without a hearing. (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250; Cal. Rules of Court, rule 5.570(d).) We review the summary denial of a section 388 petition for an abuse of discretion (*In re Anthony W.*, at p. 250), and cannot say that the juvenile court abused its discretion here with respect to any of the section 388 petitions.

Chastity B. failed to show a change in circumstances or that either a return to her or a continuation of reunification services would have been in Isabella M.'s best interests. For the most part Chastity B.'s allegations were conclusory, including claims that she was clean and sober, that she was fit to parent, that she visited Isabella regularly, that the two were bonded and close, and that she was in compliance with court orders. These conclusory assertions are unsupported by declarations or other evidence, and they therefore fall short of satisfying Chastity B.'s responsibility to make a prima facie showing of new evidence or changed circumstance. (*In re Anthony W.*, *supra*, 87 Cal.App.4th at p.250.)

The primary changed circumstance stated in the first three section 388 petitions was that Chastity B. had successfully completed her drug program. Documentation previously submitted to the court showed that Chastity B. had abandoned her treatment program at Family Services in April 2009. With her petitions, Chastity B. offered a contradictory progress report and a certificate of completion of an unnamed, unidentified program about which she was unable to provide any further information until she confirmed in her final petition that the provider was in fact Family Services by means of a letter purportedly from a counselor. Even if we were to consider there to be an evidentiary dispute over whether Chastity B. had abandoned the Family Services program as reported by DCFS, no matter how liberally we construe the petition (Cal. Rules of Court, rule 5.570(a)), there is no possibility that her certificate of completion of that program was valid. Chastity could not have completed 32 weeks of treatment as she claimed between an enrollment date of January 8, 2009, and a purported graduation date of June 9, 2009, because less than 22 weeks had passed between those two dates. (This

calculation disregards that Chastity B.'s program was going to run longer than 32 weeks of treatment: the April 2, 2009, Family Services report in the record that Chastity B.'s program would have to be extended for three weeks to compensate for the three weeks that she had missed due to her March 2009 arrest.) Chastity B. has never contended or submitted evidence that her re-enrollment date in the program was earlier than January 9, 2009, such that a June graduation date was possible. Even liberally viewing the evidence submitted with these petitions, Chastity B.'s showing, where it was not purely conclusory, was internally inconsistent and contradicted by the record already before the court. (See *In re Anthony W.*, *supra*, 87 Cal.App.4th at p. 250 [no prima facie showing where mother's allegations of completion of reunification program were belied by prior findings that she had not completed the program or overcome her substance abuse problem].)

Even if we take Chastity B.'s evidence at face value, she failed to establish a prima facie showing that it would be in Isabella M.'s best interest to be returned to her mother or to have Chastity B.'s reunification services extended. The court had found in late April 2009 that Isabella M. had been in her placement "for a year now, it's a stable placement where she's doing very well." Chastity B. made no specific showing that circumstances had changed such that the placement was no longer stable and positive for the child. In contrast, Chastity B. did not demonstrate that she could provide a stable home. She was missing visits with Isabella M. and was late when she did appear. She had been arrested for drug possession in March 2009. Even if she had completed the Family Services program, the program did not do random drug testing. Her drug tests were sporadic, with the most recent submitted test being only one from May 2009—meaning that Chastity B. failed to make a prima facie case even that she was testing negative for drugs at any time after the middle of May 2009. Without dismissing or diminishing any progress Chastity B. may have made toward sobriety, her showing was nonetheless not sufficient to demonstrate that she had made sufficient inroads into her persistent substance abuse problem such that returning Isabella M. to her or extending reunification services again would be appropriate. (See, e.g., *In re Cliffton B.* (2000) 81

Cal.App.4th 415, 423 [seven months' sobriety does not constitute changed circumstance where parent has history of periods of sobriety and relapses]; *In re Kimberly F.* (1997) 56 Cal.App.4th 519, 531, fn. 9 ["It is the nature of addiction that one must be 'clean' for a much longer period than 120 days to show real reform"].) The juvenile court did not abuse its discretion in concluding that the petition did not establish a prima facie showing of a genuine change in circumstances or that it would be in the best interest of Isabella M. to be placed with Chastity B. or to have reunification services extended to the 18-month mark.

No other information submitted with the section 388 petitions alters this outcome. In the June 2009 petition, Chastity complained extensively about the treatment that Isabella M. was receiving in her present placement. She submitted hundreds of pages of materials with the petition, but most pertained to events far earlier in the dependency case rather than demonstrating a change of circumstances or new evidence. In the petition filed July 2, 2009, beyond the contention that we have already addressed that she had completed drug treatment, Chastity's other contentions set forth no change in circumstances or new evidence; instead she complained that Isabella M. should not have been removed from her custody in the first place and that her mother, the maternal grandmother, had been forced to move from her home in order to maximize the chance that Isabella M. would be returned to her mother there. The only new circumstance related by Chastity B. was a complaint that the foster mother told DCFS that she had advised Chastity B. of the cancellation of her July 1, 2009 visit due to Isabella M.'s illness, when in fact the foster mother had not so advised her. Even if true, this fact did not tend to support the requested relief.

In the first of the July 13, 2009 petitions, Chastity complained that she had checked in at court but that the court proceeded with the hearing without her. Otherwise her statements related to her contention that she had completed the drug program at Family Services and to her position that she visited regularly with Isabella M., was bonded to her, and had a suitable home. No new evidence or change of circumstances was stated here. In the final petition, which sought only to present more documents to the

court that Chastity B. considered relevant to the issue of Isabella M.'s return to her mother, none of the documents was in fact relevant. Chastity sought to submit Isabella M.'s medical records from 2006 through November 2008; Chastity B.'s account of how Isabella M. entered the dependency system; the police report from the incident leading to Isabella M.'s 2008 detention; information about the father's arrest; Chastity B.'s drug test results showing that her drug test was negative the day Isabella was taken into DCFS custody; a letter from DCFS concerning the intervention by authorities on February 13, 2008; a DCFS report from February 2008; part of the transcript pertaining to the amendment of the allegations of the petition; more negative drug tests, most from 2008 and the most recent being one test from May 2009; progress reports from Family Services, the most recent from April 15, 2009, before she reportedly abandoned the program; the purported certificate of completion that was addressed above; medical records for Isabella M. from 2008; a lease from 2006 to 2007; and a 2008 document signed by Chastity B. purporting to make the maternal grandmother Isabella M.'s guardian; and the purported letter, replete with errors, describing Chastity B.'s completion of the Family Services program. None of these documents makes a prima facie case of changed circumstances in the summer of 2009 to merit the continuation of reunification services or the placement of Isabella M. with her mother.

In sum, we have reviewed the record, the petitions, and their accompanying documentation, and we find no abuse of discretion in the juvenile court's conclusion that Chastity had neither demonstrated (1) a substantial change in circumstances nor (2) that placement or extended reunification services with Chastity B. would be in Isabella M.'s best interest.

II. Termination of Reunification Services

Chastity B. also appeals the termination of her reunification services at the May 14, 2009 hearing. When a child is under the age of three years when removed from the home, the Welfare and Institutions Code provides that reunification services shall not

be offered for a period of more than six months unless there is a substantial probability that the child will be returned to the physical custody of a parent and safely maintained in the parent's home within the extended period of time. (§§ 361.5, subd. (a)(1)(B); 366.21, subd. (g)(1).) To find a substantial probability of return, the juvenile court must find that the parent has consistently and regularly contacted and visited with the child; that the parent has made significant progress in resolving the problems that led to the child's removal from the home; and that the parent "has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs." (§ 366.21, subd. (g)(1)(C).)

Although there were reports of Chastity being late and missing visits with Isabella in the months before the termination of reunification services, on the whole the record demonstrated that the first prong here was probably met—that Chastity B. had consistently and regularly contacted and visited the child. The evidence, however, did not show that Chastity had made significant progress in resolving the problems that led to Isabella's removal from her home. She had been arrested for drug possession in March 2009; she dropped out of her drug treatment plan in April 2009; and she was no longer submitting regularly to drug tests. Chastity had not demonstrated the capacity and ability both to complete the objectives of her treatment plan and to provide for Isabella M.'s safety, protection, physical and emotional well-being. Accordingly, the juvenile court concluded that there was no substantial probability that Isabella M. could be returned to Chastity B.'s home within six months, and terminated reunification services for Chastity B. The evidence amply supported this conclusion, and there was no abuse of discretion here.

Chastity B. argues that reunification services could have been continued for her without postponing any permanence for Isabella because reunification services were ordered for John M. at the May 14, 2009 hearing. As Chastity B. acknowledges, however, there is "no requirement that the juvenile court continue reunification services for one parent when it continues services for the other." To the contrary, "the juvenile

court retains the discretion to terminate the offer of services to one parent even if the other parent is receiving services and no section 366.26 hearing is set." (*In re Jesse W.* (2007) 157 Cal.App.4th 49, 58.) In light of Chastity's destabilization in the months preceding the court's determination, the court's failure to order the continuation of reunification services was not an abuse of discretion.

DISPOSITION

The judgment is affirmed.

ZELON, J.

We concur:

WOODS, Acting P. J.

JACKSON, J.